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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/734,273	12/11/2000	Thomas C. Harrop	50671-P018US-10013652	5508

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EXAMINER

NGUYEN, DUSTIN

ART UNIT PAPER NUMBER

2154

DATE MAILED: 04/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/734,273

Applicant(s)

HARROP, THOMAS C.

Examiner

Dustin Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 15 March 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6-16 and 18-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-16 and 18-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. Claims 1-4, 6-16, 18-33 are presented for examination.

#### ***Continued Examination Under 37 CFR 1.114***

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 01/19/2005 has been entered.

#### ***Information Disclosure Statement***

3. Examiner requests Applicants to update status of any related cases as mention in the disclosure.

#### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-4, 6-16, 18-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ballantine et al. [ US Patent No 6,446,132 ], in view of Sheets et al. [ US Patent No 6,816,905 ].

6. As per claim 1, Ballantine discloses the invention substantially as claimed including the method of automatically allocating additional hardware resources to a computer having a plurality of hardware resources, said method comprising:

monitoring use of selected ones of said hardware resources by the computer to obtain historical data pertaining to the historical availability to the computer of each said monitored hardware resource [ i.e. monitoring tool for anticipating the performance of components based on the received information ] [ 520, Figure 5; Abstract; and col 9, lines 27-37 ];

automatically analyzing said obtained historical data to arrive at a prediction of a future level of availability of a monitored hardware resource [ i.e. predicting potential problem based on the anticipated performance of components ] [ 540, Figure 5; and col 1, lines 49-67 ]; and

providing a signal when said prediction of the future level of availability of the monitored resource fails to meet an availability threshold [ i.e. activate alarm ] [ col 5, lines 53-56; and col 10, lines 17-20 ].

Ballantine does not specifically disclose

without user intervention, responding to the signal by automatically reserving or ordering an additional physical hardware resource that is not in the computer when the signal is provided and which is to be later manually physically added to the computer after the reserving or placing of an order.

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Sheets discloses

without user intervention, responding to the signal by automatically reserving or ordering an additional physical hardware resource that is not in the computer when the signal is provided [ i.e. automatic and dynamic reallocation of servers ] [ Abstract; and col 6, lines 30-39 ] and which is to be later manually physically added to the computer after the reserving or placing of an order [ col 2, lines 63-col 3, lines 20 ].

It would have been obvious to a person skill in the art at the time the invention was made to combine the teaching of Ballantine and Sheets because Sheets' teaching of adding additional resource would allow the system to be more scalable for resource usage as demand increased.

7. As per claim 2, Ballantine discloses performing at least one calculation with respect to certain of said obtained data [ i.e. analyzing received information ] [ col 1, lines 61-64 ].

8. As per claim 3, Ballantine does not specifically disclose wherein said allocating occurs when said prediction indicates that the resources are below said threshold. Sheets discloses wherein said allocating occurs when said prediction indicates that the resource are below said threshold [ i.e. predict whether to remove or add ] [ col 20, lines 1-31 ]. It would have been obvious to a person skill in the art at the time the invention was made to combine the teaching of Ballantine and Sheets because Sheets' teaching would provide a level of dynamic adjustable of resources to the system so that resources can be added or removed according to the demand.

9. As per claim 4, Ballantine discloses without user intervention, enabling the reduction of

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resources when said prediction indicates that the required resources are above said limit [ i.e. remove component ] [ col 5, lines 36-40 ].

10. As per claim 6, Ballantine disclose signal is in graphical form on a resource by resource basis [ Figures 3, 4a and 4b ].

11. As per claim 7, Ballantine discloses analyzing all available applications as a function of at least one system resource [ col 8, lines 35-col 9, lines 27 ].

12. As per claim 8, Ballantine discloses hardware resources are selected from the set of resources, including memory, CPU, disk, available ports, and network resources [ i.e. network components ] [ col 2, lines 65-col 3, lines 7 ].

13. As per claim 9, it is rejected for similar reasons as stated above in claims 1, 3 and 4.

14. As per claim 10, it is rejected for similar reason as stated above in claim 2.

15. As per claim 11, Ballantine discloses adding resources to said computer from a remote location [ 140, Figure 1 ].

16. As per claim 12, Ballantine discloses removing resources from said computer [ col 5, lines 36-40 ].

17. As per claim 13, Ballantine does not specifically disclose storing historical data on resource usage. Sheets discloses storing historical data on resource usage [ i.e. past usage ] [ col 17, lines 63-65 ]. It would have been obvious to a person skill in the art at the time the invention was made to combine the teaching of Ballantine and Sheets because Sheets' teaching would provide a dynamically reallocation of network resources [ Sheets, col 17, lines 52-60 ].

18. As per claim 14, it is rejected for similar reason as stated above in claim 7.

19. As per claims 15 and 16, they are apparatus claimed of claims 1, 2, they are rejected for similar reasons as stated above in claims 1, 2.

20. As per claims 18-22, they are apparatus claimed of claims 4, 13, 6-8, they are rejected for similar reasons as stated above in claims 4, 13, 6-8.

21. As per claims 23-28, they are apparatus claimed of claims 9-14, they are rejected for similar reasons as stated above in claims 9-14.

22. As per claims 29-33, they are program product claimed of claims 9-13, they are rejected for similar reasons as stated above in claims 9-13.

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23. Applicant's arguments with respect to claims 1-4, 6-16, 18-33 have been considered but are moot in view of the new ground(s) of rejection.

24. A shortened statutory period for response to this action is set to expire **3 (three) months and 0 (zero) days** from the mail date of this letter. Failure to respond within the period for response will result in **ABANDONMENT** of the application (see 35 U.S.C 133, M.P.E.P 710.02, 710.02(b)).

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dustin Nguyen whose telephone number is (703) 305-5321. The examiner can normally be reached on flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Follansbee John can be reached on (703) 305-8498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
JOHN FOLLANSBEE  
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Dustin Nguyen  
Examiner  
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